Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Facilitating the Provision of Spectrum-Based	)	
Services to Rural Areas and Promoting	)	WT Docket No. 02-381
Opportunities for Rural Telephone	)	
Companies	)	
To Provide Spectrum-Based Services	)	
	)	
2000 Biennial Regulatory Review	)	WT Docket No. 01-14
Spectrum Aggregation Limits	)	
For Commercial Mobile Radio Services	)	
	)	
Increasing Flexibility To Promote Access to	)	WT Docket No. 03-202
and the Efficient and Intensive Use of	)	
Spectrum and the Widespread Deployment of	)	
Wireless Services, and To Facilitate Capital Formation		

To: The Commission

COMMENTS OF THE BLOOSTON LAW FIRM

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SUMMARY

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("Blooston"), on behalf of its clients listed in Attachment A hereto (the "Blooston Rural Carriers") submits comments to the Notice of Proposed Rulemaking in the above-captioned proceeding regarding the modification of the Commission's policies and rules to facilitate the provision of spectrum-based services to rural areas and promoting opportunities for rural telephone companies to provide spectrum-based services. As discussed below, the single most important factor in making spectrum available in rural areas is the use of smaller (i.e., MSA and RSA-sized) license areas for at least a portion of the spectrum to be made available in each future auction. Other measures which should be adopted to enhance rural spectrum access include:

1. Defining "rural" as being located within a Rural Service Area (RSA).

2. Allowing rural licensees to satisfy a "substantial service" standard, in recognition of the difficulty of meeting population coverage requirements in rural areas.

3. Creating incentives to promote spectrum partitioning, disaggregation and lease transactions in rural areas.

4. Relaxing power limits in rural areas, in a way that will prevent interference to other licensed users.

5. Adopt measures (such as the creation of security interests in licenses) to encourage loans to rural carriers.

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The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("Blooston"), on behalf of its clients listed in Attachment A hereto (the "Blooston Rural Carriers") and pursuant to Rule Section 1.419 of the Commission's Rules, hereby submits comments to the Notice of Proposed Rulemaking in the above-captioned proceeding regarding the modification of the Commission's policies and rules to facilitate the provision of spectrum-based services to rural areas and promoting opportunities for rural telephone companies to provide spectrum-based services.[1]

As discussed below, the single most important factor in making spectrum

[1] *See* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies, *Notice of Proposed Rule Making*, WT Docket No. 02-381, WT Docket No. 01-14, WT Docket No. 03-202, FCC 03-222 (*rel.* October 6, 2003) ("*Notice*").

available in rural areas is the use of smaller license areas for at least a portion of the spectrum to be made available in each future auction. Other measures to enhance rural spectrum access are discussed herein.

Statement of Interest

The entities listed in Attachment A represent a variety of rural telephone company interests and small businesses that are engaged in the provision of wireless services to the public. Each has a significant interest in the outcome of this proceeding because each has an interest in seeing that the FCC adopts policies and rules that ensure meaningful rural telephone company and small business participation in the provision of spectrum-based services in rural areas, and that encourage the rapid deployment of advanced telecommunications services in rural America.

The Blooston Rural Carriers applaud the Commission for its initiative in focusing on the issue of whether wireless services are available in rural areas. Creating meaningful access to spectrum in rural areas is critical. Industry and consumer trends indicate that wireless will play a much larger role in the future in carrying both voice traffic and data.[2] As consumers come to expect greater mobility, it will be necessary for the traditional wireline telephone carriers to incorporate wireless into their service offering. In rural America, this mobility has greater significance, since everyday life often requires traveling over great distances. Moreover, accidents, vehicle breakdowns and medical emergencies have potentially more dire consequences in rural areas, if help is not summoned immediately. Effective and affordable wireless communications can

[2] *See* Federal Communications Commission, Spectrum Policy Task Force Report, ET Docket No. 02-135 (released Nov. 2002) (*SPTF Report*) at 12 (discussing explosive demand for spectrum-based services and devices).

greatly mitigate the reduced availability of emergency services in such areas. In addition, fixed and mobile wireless offers the potential to bring broadband data/internet access to rural communities more quickly and less expensively than traditional wireline technologies. Many of the Blooston Rural Carriers have been involved in deploying advanced technologies, including fiber optic rings and advanced wireless services, in rural states such as Iowa, Minnesota, Montana, New Mexico, North Dakota and South Dakota. However, it is still necessary to accomplish the "last mile" deployment to the subscriber. In remote areas, this last mile is often in fact several miles, making wireless technology an attractive or even necessary solution.

In recognition of these circumstances, Congress has instructed the Commission to take action. As the NOI correctly observes, Section 309(j)(3) of the Communications Act of 1934, as amended, directs the Commission to design competitive bidding systems so as to promote certain public interest objectives, including "promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by minority groups and women." 47 U.S.C. § 309(j)(3)(B).

When Congress gave the Commission the authority to conduct spectrum auctions in the Omnibus Budget Reconciliation Act of 1993, many legislators were concerned that competitive bidding would result in a much greater concentration of wireless licenses and facilities in the hands of large and "deep-pocketed" entities, and in the more populous and financially lucrative urban areas. *H.R. Report 103-111*, 103d Congress, 1st Session,

at pp. 254-55. As a result, Congress granted competitive bidding authority to the Commission only on the condition that the auction methodologies to be implemented would include safeguards to protect the public interest in the use of spectrum, and to advance the objectives of Section 309(j).

Congress expressly required the Commission to adopt and implement specific spectrum auction regulations that would:

- "consistent with the public interest, convenience and necessity, the purposes of this Act, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid development of new technologies and services," 47 U.S.C. § 309(j)(4)(C); and

- "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and for such purposes, consider the use of tax certificates, bidding preferences, and other procedures." 47 U.S.C. § 309(j)(4)(D).

These statutory provisions require the Commission to monitor and adjust its spectrum auction procedures to ensure that wireless facilities are being constructed and operated in rural areas, and that rural telephone companies and other small businesses are being afforded fair opportunities to acquire and develop an equitable share of the auctioned spectrum.

Quality wireless services (especially digital wireless services) are only now becoming available in many portions of rural America. With the exception of roaming corridors along rural stretches of certain interstate highways, wireless had been primarily an urban and suburban service. To a large extent, this was due to the large geographical

licensing areas (e.g., EAGs, Metropolitan Trading Areas (MTAs), etc.) that the Commission assigned in previous auctions. These large licensing areas have been dominated by one or more urban areas, and generally have had population, demographic, and economic characteristics beyond the scale that rural telephone companies could reasonably expect to successfully bid on and serve. Last year, the Commission created a block of spectrum in the Lower 700 MHz Band that was auctioned according to Metropolitan Statistical Area (MSA) and Rural Service Area (RSA) license sizes, in Auction Nos. 44 and 49. A substantial number of rural carriers were able to obtain licenses in these auctions, pointing towards a formula for the successful dissemination of spectrum to rural areas. The Blooston Rural Carriers applaud the Commission for using MSA/RSA license sizes in the Lower 700 MHz auctions, and designating a block of MSA/RSA licenses for the upcoming 1.7/2.1 GHz auction. This trend, coupled with the Commission's willingness to engage in the captioned proceeding, give rural carriers hope that their spectrum access and use issues can be addressed.

The Blooston Rural Carriers address below the specific inquiries posed by the Commission in this proceeding.

I. Definition of "Rural"

The *Notice* requests input on how the term "rural areas" should be defined, for use in conjunction with each of the policies adopted in this proceeding. The Blooston Rural Carriers believe that the Commission has already begun to explore a rural spectrum allocation path that will effectively implement the Act, without creating an unduly complicated definition of the term "rural." As discussed further below, the Commission should license at least a portion of virtually all future spectrum allocations on the basis of

the MSA/RSA assignment model, in order to ensure the rural deployment of spectrum-based services. The Commission has already taken a positive first step by assigning MSA/RSA licenses to the 12 MHz C-block in the Lower 700 MHz Band (710-716 MHz/740-746 MHz).[3] As discussed above, rural carriers were very active in this spectrum sale, and most were successful bidders.[4]

Adopting an RSA-sized licensing model will help the Commission avoid an overly broad application of rural benefits, because it can define "rural" as including any area that is outside of an MSA. This would ensure that wireless facilities actually would be constructed and operated in rural areas. By definition, an RSA is an area made up of rural territory, without any significant urban or suburban area within its boundaries. This fact would allow the Commission to avoid an overly complicated definition of "rural", since any construction within the RSA would be service to a rural area. If future auctions feature at least one block of MSA/RSA licenses, use of an RSA-based definition of "rural" would be consistent with this licensing approach, and promote simplicity.

For this reason, the Blooston Rural Carriers believe that RSA-sized licenses should be used for at least one band of spectrum in virtually every auction, rather than using a sliding definition of "rural" from auction to auction.

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[3] *See* Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, GN Docket No. 01-74, FCC 01-342, 17 FCC Rcd 1022 (2001) ("*Channel 52-59 Reallocation Order*").

[4] In FCC Auction No. 44, fifty-six (56) of one-hundred fifty-three (153) short-form applicants reported eligibility status as a rural telephone company. In FCC Auction No. 49, nineteen (19) of sixty (60) short-form applicants reported rural telephone company status.

II. Improved Access to Unused Spectrum

The *Notice* seeks comment on a variety of means by which the Commission may promote access to and efficient use of spectrum in rural areas, ranging from allowing voluntary arrangements that move spectrum and licenses between users to establishing regulatory mechanisms by which the Commission reclaims and re-licenses unused spectrum.[5] In this regard, the Commission seeks comment on what constitutes "use" of spectrum, and on the pros and cons of re-licensing versus market-based mechanisms.

A. What Constitutes "Use" of Spectrum

On the issue of how the FCC should define "use" in order to effectively promote access to and use of spectrum in rural areas, the Blooston Rural Carriers agree with the Commission's proposal that spectrum in rural areas that is leased by a licensee, and for which the lessee meets the performance requirements that are applicable to the licensee, should be construed as "used" for the purposes of this proceeding and any other performance criteria that the Commission should adopt.[6] If a licensee relies in good faith on a timely contractual promise by an unrelated lessee to construct coverage necessary for the licensee's build out obligation, and the lessee fails to perform, the Commission should show flexibility in considering a request for extension of time. Otherwise, licensees will be discouraged from utilizing the spectrum lease mechanism.

Absent any evidence of abuse, the Commission should continue to allow licensees the flexibility to determine what signal strength is "sufficient to provide adequate service." Because new technologies and systems are constantly being developed to

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5 *Notice* at ¶ 13.

6 *Notice* at ¶ 20.

increase the performance and efficiency of wireless networks (*e.g.*, smart antennas), the Commission should monitor the various means by which licensees report their construction without establishing a particular baseline for what is acceptable. The views of the Blooston Rural Carriers on the other specific questions posed by the *Notice* on this issue are set forth below:

1. Should the FCC harmonize its rules for defining protected service area for site-based incumbents and establish a database of available "white space" in rural areas?

Answer: Probably not. This is an interesting idea, and may be worth exploring, but overall we believe that existing buildout showings already provide sufficient information. Also, it would be burdensome for small businesses and rural telephone companies to ensure that the database is continually kept up to date as they construct their networks, and it may result in disclosure of sensitive information about network buildout and business priorities.

2. Should the FCC expand its use of spectrum "audits" and make *in situ* measurements of signal strength in selected rural areas to maintain an "inventory" of available spectrum?

Answer: No. Commission should use its limited resources to promote its secondary market initiatives and additional incentives proposed herein. Audits and field measurements should be occasional and random, to create a compliance incentive, or should be in response to a bona fide showing that a particular licensee may have falsely reported compliance with its build out requirements. As discussed above, licensees should have some flexibility in defining what constitutes a signal strength "sufficient to provide adequate service." Licensees that have paid for spectrum at auction (including rural licensees) should not be bogged down in a quagmire of arguments and challenges as to whether their signal is adequate in a particular area. As much as the Blooston Rural

Carriers want to see greater access to spectrum in rural areas, this should not be accomplished on terms that make it unwieldy to provide service under the Commission's "flexible spectrum use" policies.

3. Should the FCC limit its efforts to create such an inventory to the most rural or underserved areas? If so, what areas? (Alaska, Appalachia and Mississippi Delta suggested as particularly appropriate)

Answer: As discussed above, the Commission should use its resources to encourage rural spectrum services where there are currently disincentives. There does not seem to be an absence of knowledge about what spectrum is unused in rural areas, so much as there are obstacles to obtaining and using this spectrum.

B. Re-Licensing vs. Market-Based Mechanisms

The Commission also seeks comment on when, and under what circumstances, it should use re-licensing as a means to increase access to spectrum. *Notice* at ¶ 20. Licensed spectrum may return to the Commission due to non-use under a "complete forfeiture" standard, as applied to PCS licensees, or under a "keep what you use" standard, as applied to cellular licensees. Once this spectrum is reclaimed, the Commission may then re-license it via competitive bidding, as with PCS licenses, or it may use a non-auction mechanism such as the cellular unserved area re-licensing rule.

On the issue of re-licensing, the Blooston Rural Carriers believe that this approach presents a double-edged sword for rural carriers. On the one hand, re-licensing may be a useful tool to "free up" unused rural spectrum from large market area licenses, where the licensee is able to meet its construction and performance requirements by extending service to large metropolitan areas. On the other hand, re-licensing can be problematic when applied to smaller geographic area licenses, such as BTAs and RSAs,

or where the underlying license holder is a rural telephone company or a *bona fide* small business. Where smaller license areas are used, re-licensing by a "keep what you use" or an "unserved area" model would actually provide a disincentive to carriers that want to focus their efforts on extending service to sparsely populated areas; it can be difficult to apply fairly in markets where size and population density may vary widely, and when the pace of system buildout is often influenced by larger economic forces; it effectively strips a licensee of legitimate business opportunities, such as the ability to lease excess spectrum in the secondary market; it discourages businesses from obtaining small geographic licenses to provide niche services or for internal-use communications; and it could result in sudden and unpredictable swings in the valuation of rural licenses.

To avoid problems such as those outlined above, the Blooston Rural Carriers believe that the Commission should limit any re-licensing efforts to geographic licenses that are MTA-sized and larger. Another way for the Commission to avoid these re-licensing issues is by focusing its efforts primarily on market-based mechanisms to make rural spectrum available. In this regard, the Blooston Rural Carriers have been encouraged by the Commission's recent efforts to remove unnecessary regulatory barriers to the development of secondary markets in spectrum usage rights.[7] The spectrum leasing policies and rules adopted in the *Secondary Markets Order* represent important first steps to facilitate broader access to unused spectrum resources. However, the existing regulatory scheme for wireless services does not give licensees an adequate incentive to participate in the secondary market, and may not go far enough to ensure the

[7] *See* Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 00-230, FCC 03-113 (*rel.* October 6, 2003) (hereinafter referred to as "*Secondary Markets Order*" or "*Further Notice*," as appropriate).

optimally efficient use of spectrum in rural areas. For this reason, and to promote the statutory objective of ensuring that advanced telecommunications capability is available to all Americans in a reasonable and timely fashion, the Commission should adopt a variety of regulatory and financial incentives to promote geographic license partitioning and/or long-term lease arrangements with carriers that seek to provide service in rural areas. Such incentives would help to fulfill the Commission's obligation under Section 309 (j) of the Act, to ensure the participation of rural telephone companies in the provision of advanced telecommunications services.

The Blooston Rural Carriers believe that spectrum leases may prove to be a valuable tool in facilitating access to unused rural spectrum. However, in a number of situations, carriers will need the certainty and permanence of licensee status that can only be provided by a true partitioning arrangement before a rural telco board of directors or other financing source will approve the expenditure of substantial resources on the construction and operation of a telecommunications system.

1. Regulatory Incentives are Needed to Promote Spectrum Partitioning and Disaggregation

Despite all good intentions, the Commission's partitioning and disaggregation rules have proven to be largely unsuccessful in assisting rural telephone companies and other small businesses to enter the wireless business. The problem is that the large national and regional carriers that control the licenses for most of the spectrum are not willing or able to devote the time and resources necessary to negotiate and implement arrangements on the scale desired by rural telephone companies. Put simply, most national and regional carriers are not willing to negotiate partitioning and disaggregation arrangements for areas that have less than a million "pops" (potential market population).

Commissioner Copps recognized this problem in announcing the NOI in this proceeding: "While partitioning and disaggregation theoretically could accomplish this goal, there is no proof that they do so," the Commissioner said. "Therefore, we should not rely on these tools to meet our statutory obligation until we gather far more information."[8] Indeed, the Commission's Spectrum Policy Task Force has also recommended that the Commission "should expand the ability of spectrum users to partition their geographic service areas, or space, so that portions of their service areas that would otherwise lay fallow could potentially be put to use."[9]

The Commission should revise the partitioning and disaggregation rules to better facilitate such transactions by providing large licensees with greater incentives to deal with rural carriers. Such incentives can include a larger reduction of a buildout requirement if a licensee partitions to a rural carrier; and/or a modified version of the cellular unserved area rule for MTA or larger licenses. These mechanisms would be an important improvement to the current situation; but they will not be effective as the only tool for rural entities to obtain spectrum, and smaller license areas in future auctions are still necessary.

2. The Commission Should Adopt a Framework for Enhanced "Rural Partitioning" Bidding Credits

Under the scheme that is proposed by the Blooston Rural Carriers, auction winners will receive financial incentives, by way of a reduction in their final license

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[8] Statement of Commissioner Michael J. Copps, In the Matter of Amendments to Parts 1, 2, 27, and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz Government Transfer Bands *Report and Order,* WT Docket No. 02-08*, rel.* May 16, 2002.

[9] *SPTF Report* at p. 19.

payment obligation, for entering into *bona fide* license partitioning transactions with non-affiliated businesses that have agreed to extend service to rural markets. In this instance, rural markets could be defined as areas that are (1) contiguous with a RSA, or a BTA which has a population of no more than 1,000,000 pops; or (2) centered on the certificated rural telephone service area of the partitioning carrier. The amount of a licensee's final payment reduction would be equal to the percentage of partitioned coverage in relation to the entire service area (measured by the number of pops).

As an example, the hypothetical winner of an EAG license with a net high bid of $10,000,000 would be provided with an opportunity (*e.g.*, upon submission of its long-form license application) to indicate whether and to what extent it wanted to partition rural areas from its license. Assuming that 30% of the EAG consisted of RSA or rural BTA territory, the auction winner would be able to indicate its desire to receive a license payment reduction of 30%, upon agreeing to partition these areas to rural telephone companies within the EAG. If this auction winner instead sought a 25% rural partitioning credit, preferring to keep some of the rural area for itself, it would receive a 25% credit.

Under the Blooston Rural Carriers proposal, the licensee would have one year from the initial grant date of its license to enter into bona-fide partitioning arrangements with qualified rural telephone companies, and its final payment obligation would be reduced accordingly. The licensee would be permitted to negotiate any arms-length partitioning arrangement it wanted, offering it to the highest qualified bidder in a secondary market transaction or simply electing to give the spectrum away to qualified rural carriers for the value of the credit. At the one year anniversary of the license grant,

the licensee would be required to submit evidence that it had filed partial assignment applications covering the percentage of territory it had agreed to partition; and, if a partitioning application is pending, the licensee can file with the Commission requesting a refund in an amount equal to the discount attributable to any area it is able to partition.

3. The Commission Should Provide Regulatory Incentives for Entering Into Rural Partitioning or Long-Term Lease Agreements

Currently, the only incentive for a licensee to partition its spectrum to a rural carrier is the ability to reduce its coverage and service obligations proportionally. However, because rural service areas are by definition sparsely populated, this reduction in buildout obligation is generally small enough that larger carriers have found little or no incentive to enter into rural partitioning agreements. In order to make the partitioning mechanism meaningful, the Commission should provide that the partitioning licensee would receive triple, quadruple or quintuple credit for the population partitioned. A similar incentive should be offered when a licensee enters into a long-term, binding lease agreement with a rural telephone company or its subsidiary. Such lease agreement must provide that in the event the licensee sells its overall license, the purchaser must honor the term of the lease arrangement. In the event of license forfeiture, the Commission should either allow the rural carrier to purchase its leased area as a partitioned license (at the per-pop bid price paid by the original licensee); or should allow the rural carrier to continue operation on its leased spectrum until the license is reauctioned. The latter option would prevent a disruption of service, and give the rural carrier an opportunity to negotiate a similar lease arrangement with the subsequent auction winner while its long-form application is pending. In the absence of a successful negotiation, the new licensee should be required to honor the terms of the existing lease until it expires.

III. Performance Requirements

In its *Notice*, the FCC has proposed certain modifications to its construction requirements to promote licensee flexibility and to spur build-out in rural areas. In particular, the Commission has proposed to adopt a "substantial service" alternative for all wireless services that are licensed on a geographic area basis that are subject to construction requirements.[10] The Commission also seeks comment on whether requiring compliance with additional construction requirements in license terms following initial renewal of the license might be likely to increase build-out in rural areas.

The use of performance requirements to ensure service to rural areas presents several thorny problems. If large license areas are sold at auction, most licensees can satisfy their performance requirements by serving only urban and suburban areas within the license territory. In contrast, if the Commission strips a licensee of any unserved areas too early in the license period, it has arguably deprived the licensee of rights for which it paid valuable consideration. As discussed above, a possible solution is to adopt a modified version of the cellular "fill in" rule, in order to give rural interests an opportunity to serve portions of a larger license that remain unserved after a reasonable period of time has passed. However, it is important to give the incumbent licensee a reasonable opportunity (coupled with incentives) to serve such areas before they are stripped away.

This issue further underscores the importance of using the MSA/RSA licensing scheme in the future. If MSA/RSA licenses are awarded, larger licensees generally do not end up with rural areas that they will decline to serve. And rural carriers that obtain

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[10] *Notice* at ¶ 35.

RSA licenses will by definition be serving rural areas when they construct their licensed system.

A. Substantial Service Construction Benchmarks

The Blooston Rural Carriers generally support the Commission's proposal to expand the availability of a "substantial service" alternative for wireless services that are licensed on a geographic area basis and thus are subject to construction requirements. The existing population- and/or geographic-based coverage criteria may be difficult for rural and small business licensees to meet in markets that have a low population density, rugged terrain and few if any "urban centers". As the Commission has noted, providing wireless licensees with a "substantial service" construction alternative will allow them to focus their build-out efforts on previously untargeted niche or rural areas, rather than having to duplicate existing services in more densely populated areas.[11] The Blooston Rural Carriers agree with this rationale, and urge the Commission to amend its rules expeditiously. In this regard, with the five-year construction deadline just months away for many C-Block Broadband PCS licensees,[12] it would be appropriate for the FCC to issue an interim order as soon as possible so that rural PCS licensees will have a meaningful opportunity to benefit from the Commission's revised policies and rules.

Commenters in the prior stage of this proceeding have raised a valid concern as to whether large licensees could utilize a "substantial service" option to escape any

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[11] *Notice* at ¶ 37.

[12] The five-year construction requirement for many of the broadband PCS licenses granted following FCC Auction No. 22 will be coming up in June 2004. *See, e.g.*, *Public Notice* DA 99-2288, Report No: CWD-22-C, "Wireless Telecommunications Bureau Grants 159 C, E, & F Block Broadband PCS Licenses - Auction Event No. 22," (*rel*. June 30, 1999).

obligation to extend service to rural areas. *Notice* at ¶ 37, n. 84. Generally speaking, larger license areas include enough urban area that the licensee should not need to rely on a substantial service option. For this reason, the Commission may want to limit the availability of the substantial service mechanism to licenses smaller than an MTA.

In addition, the Blooston Rural Carriers support the Commission's proposal to adopt a substantial service "safe harbor" based on provision of rural service.[13] With respect to mobile wireless services, the Commission has suggested that a licensee will be deemed to have met the substantial service requirement if it provides coverage, through construction or lease, to at least 75 percent of the geographic area of at least 20 percent of the "rural" counties within its licensed area.[14] In this context, the Commission has proposed that "rural" counties be defined as those counties having a population density less than or equal to 100 persons per square mile. Many of the counties where the Blooston Rural Carriers provide service have population densities far below 100 persons per square mile, and cover vast geographic areas. When applying this definition to the State of South Dakota, for example, all but one of the sixty-five counties in the state would qualify under this definition as rural.[15] In fact, a majority of South Dakota's counties have population densities below 10 persons per square mile.

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13 *Notice* at ¶ 41.

14 *Notice* at ¶ 41.

15 *See* Population Density Figures for Counties in South Dakota, attached as Appendix A. According to 2000 Census Bureau figures, the State of South Dakota has an average population density of less than 10 persons / sq. mile. Minnehaha County (with a population density of 183.1 persons / sq. mile) is the only county with a population density of greater than 50 persons / sq. mile. One county (Harding County) has a population density of 0.5 person / sq. mile.

B. Renewal License Terms

The Blooston Rural Carriers believe that the imposition of additional performance requirements may be appropriate for commercial wireless services that are licensed over MTA and larger-sized geographic areas, where the danger of uneconomic construction is minimal. However, the Commission should not impose additional performance requirements on RSA licenses, BTA licenses, or smaller partitioned areas. Doing so in these areas would run contrary to the Commission's rationale for proposing to extend a "substantial service" buildout option to all wireless licensees. Accordingly, the Blooston Rural Carriers believe that a variety of regulatory incentives (discussed above), rather than additional requirements, is the best way to promote additional buildout once the minimum coverage benchmarks have been met.

IV. Relaxed Power Limits

The Blooston Rural Carriers generally support the concept of allowing increased power levels for rural telecommunications systems. A major consideration in any rural system design is cost. A stumbling block has always been the exorbitant expense of deploying dozens of costly lower power transmitters to cover stretches of roadways connecting small rural towns. And it is even more costly to deploy transmitters covering the scattered ranches and farms beyond the highways, where the population density is even less.

CTIA has raised valid concerns that higher-powered rural operations will still be limited by the low power of mobile devices, and that higher powered operations may increase the risk of interference to larger population centers that border rural areas. *Notice* at ¶ 51. The Blooston Rural Carriers recognize that there must be safeguards to ensure

that high power operations in rural areas do not interfere with urban or suburban operations. However, given the remoteness of most rural areas from major markets, it should be feasible to create such safeguards, especially for fixed or "low mobility" services; and it is hoped that technology will eventually provide a solution for the issue of how mobile units can successfully communicate with high powered base stations. It could be that the use of alternative spectrum for the return communications, or software-defined switching to clear channels, or use of spread spectrum technologies will overcome this obstacle. As the Commission observes (Notice at ¶ 51), such technologies are already under development. If the Commission adopts clear-cut interference definitions and protections, it should be able to leave enough flexibility in the relaxed rural power standards to allow for such new technologies, while addressing CTIA's concerns. If necessary, the Commission can limit the use of higher powered mobile devices unless and until adequate interference protections are demonstrated.

The Commission should also explore allowing higher power for Part 15 unlicensed devices in rural areas; however, as the Blooston Rural Carriers have pointed out in other recent proceedings, such unlicensed operations should not be allowed on spectrum that has been licensed for higher-powered operations, especially by auction. Allowing unlicensed operations on licensed spectrum, in the absence of licensee consent, creates the risk of interference problems without any adequate detection and enforcement mechanism (since the interference source is not licensed); and such unlicensed operations essentially deprive the licensee of business opportunities that it bargained for in bidding on the spectrum at auction.

V. Appropriate Size of Geographic Service Areas

As described above, many of the licensing areas used in prior auctions have been too expensive for rural telephone companies and consortia to acquire, and too costly and unwieldy for them to construct and operate thereafter. As a result, much of the important third generation wireless spectrum has been acquired at auction or thereafter by large national and regional wireless carriers with the "deep pockets" necessary to bid and pay high prices. These large carriers have naturally focused their construction and service efforts in the most populous and lucrative urban and suburban portions of their licensing areas, given their build out requirements and the practicalities of their business case. In fact, these carriers normally have been able to satisfy their full build-out requirements without reaching the rural portions of the licensing areas. *The Blooston Rural Carriers therefore consider the unavailability of small license areas in auctions to be the single greatest obstacle to rural spectrum access.*

The Commission and Congress recognized this problem when MSA/RSA licensing areas were adopted for the Lower 700 MHz Band C-block auction.[16] Many rural telephone companies were successful when seeking RSA licenses in the Lower 700 MHz auction. The Blooston Rural Carriers urge the Commission to continue to assign MSA/RSA licensing areas to one or more spectrum blocks in all future auctions.

While some rural telcos were able to obtain BTA-sized licenses, many failed in their attempt to obtain their BTAs of interest. By definition, every BTA contains a city or town that is at the center of commerce for the designated area. This population center makes the BTA an attractive bidding target for larger applicants, and often makes it

[16] *Auction Reform Act of 2002*, Pub. L. 107-95. *See also Channel 52-59 Reallocation Order*.

possible for the auction winner to satisfy its construction requirement by serving only the population center in the BTA. Therefore, the MSA/RSA license scheme is much more effective in ensuring service to rural areas.

RSA license areas will also ensure that these licenses will be acquired by the entities that place the highest value upon serving rural areas. Rural telephone companies have a long and proven record of high-quality service that has been responsive to the needs of rural customers. If license sizes are small enough for rural telephone companies to acquire them with their limited resources, wireless services will be more readily deployed in rural America, consistent with the rural mandates of the Communications Act. At the same time, the Commission will be helping a group of bona fide and verifiable small businesses to participate in telecommunications, consistent with its statutory obligations.

The Commission poses the question of whether it should adopt the use of "medium-sized" license areas as a "middle solution" to accommodate the spectrum needs of both large and small carriers. Such approach would be no more effective than Solomon's proposal to split the infant in two. If a small, rural carrier can only afford to bid on an RSA-sized license, and is only interested in serving such smaller areas, then the use of medium-sized licenses will as a practical matter be as unsuitable as the use of large license areas. And for larger carriers, the use of such areas will merely drive up their transaction costs. Instead, the appropriate middle ground is to offer a mix of large and small license areas in each auction. The Blooston Rural Carriers note that in every important auction that has featured smaller (BTA or RSA) licenses, the Commission also auctioned other frequency blocks of the same spectrum, using larger license areas. Thus,

PCS licenses were auctioned using both MTA and BTA licenses; 39 GHz licenses were auctioned on both an EA and EAG basis; and while one 12 MHz-block of Lower 700 MHz spectrum has been auctioned using MSA/RSA-sized licenses, the remaining Lower 700 MHz A/B/E-blocks, as well as the Upper 700 MHz Band (TV Channels 60-69) will be auctioned as much larger EAG licenses.[17] Thus, even when the Commission has made smaller licenses available, the nationwide carriers have had a more than equal opportunity to obtain a larger license that included rural areas. The proposal to make at least one RSA-sized license available in each future auction would not change this fact.[18]

The future of rural wireless communications depends on the participation of rural telephone carriers, which have a proven track record of serving their communities. In recognition of this fact, Congress mandated that the Commission facilitate rural telco participation in advanced telecommunications services, pursuant to Section 309(j) of the Act. The offering of at least one RSA-sized spectrum block in each auction has proven to be the most effective way to allow rural carriers to gain access to spectrum.

VI. Access to Capital

The Commission requests comment on how it can make the RUS loan programs more effective in order to facilitate access to capital for rural wireless providers. Specifically, the Commission asks whether it should permit RUS to obtain security

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[17] *Auction Reform Act of 2002*, Pub. L. 107-195. *See also Public Notice* DA 02-1829, Auction of Licenses in the 747-762 MHz and 777-792 MHz Bands (Auction No. 31) is Rescheduled, *released* July 26, 2002.

[18] In any event, if a nationwide carrier wishes to serve rural areas, it will generally be able to dominate the RSA-license auction if it desires to do so.

interests in the spectrum licensees of commercial and private terrestrial wireless service borrowers. Notice at ¶¶ 81-82 Permitting a licensee to pledge their licenses to RUS as collateral is another means by which a rural wireless provider could raise much needed capital. As the Commission correctly recognizes, currently a license is able to grant security interests in its equipment, stock and the proceeds of a license sale. Adding the license to the collateral pie will likely reduce the risks of lending, as RUS would be able to keep all of the required elements of a wireless project together as a package. In the absence of spectrum, the equipment and customer accounts can be rendered worthless. Having the option to pledge a security interest in the license would also lower transactions costs between the lender and borrower, as the borrower will garner greater access to capital, and the RUS could possibly have greater access to secondary loan markets.

The Commission suggests that that any RUS security interest in a license should be conditioned on the Commission's prior approval of any assignment of the license or any transfer of *de jure* or *de facto* control of the licensee to RUS. ¶84 In this way, the Commission could maintain control of the spectrum in the public interest, satisfying its Congressional mandate, while at the same time encouraging capital formation in rural areas. The Rural Commenters support the oversight function of the Commission in this regard, and accordingly would not be opposed to such a restriction.

The Commission requests comment on how the RUS as a secured creditor may affect the ability of the licensee to seek financing from other sources, and whether RUS would then have undue influence over a licensee. ¶¶88-89. Providing licensees with the ability to offer their license as collateral would create an opportunity, not a requirement.

Accordingly, the wireless provider, as in all loan decisions, will initially determine whether the business risks outweigh the benefits of using its license for collateral. Currently, the opportunity to make this decision does not exist. Moreover, it is very unlikely that RUS would have an inappropriate influence over the licensee to the detriment of competition and innovation by and among wireless service providers. Instead, access to additional capital will spur innovation and competition in rural areas as wireless providers will be quickly able to respond to market conditions and enable them to bring new services to traditionally unserved areas.

CONCLUSION

In order to ensure meaningful rural telephone company and small business participation in the provision of spectrum-based services in rural areas, and to encourage the rapid deployment of advanced telecommunications services in rural America, the Blooston Rural Carriers respectfully urge the Commission to adopt policies and rules as outlined in these comments.

Respectfully Submitted,

THE BLOOSTON RURAL CARRIERS

_____/s/_____

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ATTACHMENT A

A list of the rural telephone companies, cooperatives and rural telco subsidiary companies that comprise the "Blooston Rural Carriers" is provided below.

- Allcom Communications, Inc.
- Alliance Communications Cooperative, Inc.
- Arvig Communications Systems
- CC Communications
- Golden West Telecommunications Cooperative, Inc.
- Interstate Telecommunications Cooperative, Inc.
- James Valley Telecommunications
- Kennebec Telephone Company
- McCook Cooperative Telephone Company
- Midstate Communications, Inc.
- Midvale Telephone Exchange, Inc.
- Montana Wireless, Inc.
- North Dakota Network Company
- Park Region Mutual Telephone Company
- Polar Communications Mutual Aid Corporation
- PVT Networks, Inc.
- Rothsay Telephone Company
- Santel Communications Cooperative
- South Slope Cooperative Telephone Co., Inc.
- 3 Rivers Telephone Cooperative, Inc.
- Valley Telecommunications Cooperative Association, Inc.
- Venture Communications, Inc.
- Webster Calhoun Cooperative Telephone Association
- West River Cooperative Telephone Company

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